

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**VISTA FOOD EXCHANGE, INC,**

**Plaintiff,**

**v.**

**LAWSON FOODS, LLC,**

**Defendants.**  
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**1:17-cv-07454-ALC-SN  
ORDER**

**ANDREW L. CARTER, JR., District Judge:**

The Court is in receipt of the April 7, 2021 motion from Plaintiff Vista Food Exchange, Inc. requesting an order enforcing the parties' Notice, Consent, and Reference of a Dispositive Motion to a Magistrate Judge, Dkts. 166, 171 ("July 2019 Consent to Jurisdiction"), among other relief. Dkt. 221. The Court DENIES this motion because, contrary to Plaintiff's assertion, the remaining proceedings are beyond the scope of the July 2019 Consent to Jurisdiction.

28 U.S.C. § 636 provides that a Magistrate Judge may, "[u]pon the consent of the parties, . . . conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case, when specially designated to exercise such jurisdiction by the district court or courts he serves." 28 U.S.C. § 636(c)(1). "Such consent may be express or implied, *see, Roell v. Withrow*, 538 U.S. 580, 585, 588, 123 S. Ct. 1696, 155 L. Ed. 2d 775 (2003); but unless there is such consent by all of the parties, 'the Magistrate Judge lack[s] authority to enter judgment,' *Yeldon v. Fisher*, 710 F.3d 452, 453-54 (2d Cir. 2013)." *Stevens, Hinds & White, P.C. v. Fisher, Byrialsen & Kreizer, PLLC (In re McCray, Richardson, Santana, Wise, & Salaam Litig.)*, 832 F.3d 150, 153 (2d Cir. 2016).

The July 2019 Consent to Jurisdiction provides: "The following parties consent to have a


United States magistrate judge conduct any and all proceedings and enter a final order *as to each motion identified below: Motion for contempt, and sanctions* against Fortress Foods, LLC, Lawson Foods, LLC, and Simon Law that was the subject of evidentiary hearing before Judge Netburn on July 16, 2019”. Dkts. 166, 171 (emphases added). On November 1, 2019, Judge Netburn entered a final order resolving the motion for contempt in favor of Plaintiff. Dkt. 172. The proceedings at this stage of the case—and the relief requested by Plaintiff—are clearly beyond the scope of the parties’ consent for Judge Netburn to “conduct any and all proceedings and enter a final order as to” the motion for contempt. Accordingly, the July 2019 Consent to Jurisdiction provides no basis for the Court to confirm that Judge Netburn has jurisdiction to “make all determinations, and enter the final order in this action”, as Plaintiff requests. Mot. at 8.

For the reasons above, Plaintiff’s motion is DENIED. If the parties wish to consent to Judge Netburn’s jurisdiction for all purposes, including entry of judgment, they must do so pursuant to a new Consent to Jurisdiction indicating as much. *See* Dkt. 220. The Court advises the parties that they “are free to withhold consent without adverse substantive consequences.” *Stevens*, 832 F.3d at 153. Unless a new Consent to Jurisdiction is filed, the Parties will proceed with the inquest before Judge Netburn pursuant to the Amended Order of Reference, Dkt. 209. The Clerk of Court is respectfully directed to close the motion at Dkt. 221.

**SO ORDERED.**

**Dated: April 9, 2021**

**New York, New York**



**ANDREW L. CARTER, JR.**  
**United States District Judge**